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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JAY LAWRENCE JUNE, JR.,

Defendant and Appellant.

H042675

(Santa Cruz County

Super. Ct. No. F22960)

Defendant Jay Lawrence June, Jr. appeals the trial court's order denying his petition under Penal Code section 1170.18.<sup>1</sup> For the reasons stated here, we will affirm the order but will do so without prejudice to the trial court's later consideration of a properly supported petition.

**I. TRIAL COURT PROCEEDINGS**

Defendant was charged with receiving stolen property (former § 496, subd. (a)), as a felony, in June 2012. According to police reports in the record, defendant was arrested after being found in possession of a necklace that had been reported stolen. The necklace was one of several pieces of jewelry that had been reported stolen. The reported total value of all the jewelry was between \$4,000 and \$10,000, but the value of the necklace was not specifically identified. Defendant pleaded no contest to that offense in July 2012

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<sup>1</sup> Unspecified statutory references are to the Penal Code.

and was placed on three years' felony probation. Probation was later revoked and defendant received a felony jail sentence.

Defendant filed a petition for resentencing under section 1170.18 in June 2015, noting that section 496 was amended by Proposition 47 such that receiving property worth less than \$950 is now a misdemeanor. He petitioned under section 1170.18, subdivision (a), which applies to persons presently serving a sentence. The petition was not supported with any evidence that defendant was eligible for resentencing.

Defendant apparently completed his sentence before the trial court had a hearing on the petition, leading defense counsel to argue at the hearing on the petition that the petition should be considered one for redesignation of a previously-served felony sentence (§ 1170.18, subd. (f)). The trial court denied the petition, reasoning that defendant had not met his burden of showing that the value of the stolen property he possessed was less than \$950.

## **II. DISCUSSION**

### **A. PROPOSITION 47**

Proposition 47, approved by voters in November 2014 and codified in section 1170.18, reduced several offenses from felonies to misdemeanors. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879 (*Sherow*).) Before Proposition 47, receiving stolen property was punishable as either a felony or a misdemeanor, without regard to the value of the stolen property. (Former § 496, subd. (a); Stats. 2011, ch. 15, § 372, p. 417.) As currently enacted, violating section 496 “shall be a misdemeanor” if the value of the stolen property does not exceed \$950. (§ 496, subd. (a).)

Section 1170.18, subdivision (a) provides a mechanism for individuals to petition for resentencing: “A person currently serving a sentence for a conviction ... of a felony or felonies who would have been guilty of a misdemeanor ... had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that

entered the judgment of conviction in his or her case to request resentencing ... .”  
(§ 1170.18, subd. (a).)

Section 1170.18, subdivision (f) provides a mechanism for an individual who has already served a sentence to have his or her felony conviction redesignated as a misdemeanor: “A person who has completed his or her sentence for a conviction ... of a felony or felonies who would have been guilty of a misdemeanor ... had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.”

#### **B. BURDEN TO DEMONSTRATE ELIGIBILITY**

Defendant argues that the trial court erred in assigning him the initial burden of demonstrating his eligibility for relief under section 1170.18. Defendant’s appellate argument focuses entirely on resentencing under section 1170.18, subdivision (a), even though his trial counsel argued that defendant’s petition was more properly considered one for redesignation under section 1170.18, subdivision (f). Because defendant had already served his entire sentence for the felony conviction before the hearing on his petition, we focus our analysis on defendant’s initial burden under section 1170.18, subdivision (f).

Section 1170.18, subdivision (f) is silent regarding the initial burden regarding eligibility. But courts have consistently found that petitioning defendants bear the burden of presenting a prima facie showing of eligibility for resentencing under section 1170.18, subdivision (a), the language of which is substantially similar to the language regarding eligibility for redesignation in section 1170.18, subdivision (f). (*Sherow, supra*, 239 Cal.App.4th at pp. 879–880; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 448–449; *People v. Perkins* (2016) 244 Cal.App.4th 129, 136–137; *People v. Bush* (2016) 245 Cal.App.4th 992, 1007–1008; *People v. Johnson* (2016) 1 Cal.App.5th 953, 964–965.) Those decisions are generally based on Evidence Code section 500, which

states: “Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” (E.g., *Sherow*, *supra*, 239 Cal.App.4th at p. 879.)

Defendant argues that the foregoing authorities were wrongly decided. Regarding Evidence Code section 500, defendant notes that the general rule in section 500 is inapplicable where one party has greater access to information necessary to satisfy the burden of proof. (Citing *Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 35.) Based on that exception, defendant argues that the People have greater access to the evidence necessary to determine defendant’s eligibility for relief because “all the facts necessary to prove the value of the stolen property are still more easily obtainable by the prosecution.” Contrary to defendant’s argument, a petitioning defendant should be equally, if not more, capable of providing information to support a *prima facie* showing of eligibility for relief because he or she will have personal knowledge of the circumstances of the offense. (See *Sherow*, *supra*, 239 Cal.App.4th at p. 880 [noting that applying the burden to *Sherow* “would not be unfair or unreasonable” because he “knows what kind of items he took from the stores” that led to the felony convictions he petitioned to reduce].)

We find the weight of published authority on this topic persuasive, and we are not persuaded by any argument to the contrary in defendant’s briefing. We therefore find that defendant had the initial burden to demonstrate his eligibility for redesignation under section 1170.18, subdivision (f).

### **C. DEFENDANT DID NOT MEET HIS INITIAL BURDEN**

Defendant’s petition provided no information regarding his eligibility for relief under section 1170.18. Defendant merely described his previous offense as “Penal Code section 496 less than \$950.00,” without providing anything to support that assertion. As such, the trial court properly concluded that defendant had not met his initial burden to demonstrate that the stolen property he possessed in 2012 had a value less than \$950.

Though we find that the trial court properly denied defendant's petition, our decision does not prevent defendant from filing a new petition that is accompanied by supporting evidence. Because we find that defendant did not meet his initial burden, we do not reach his other arguments about the trial court's decision to deny his petition.

### **III. DISPOSITION**

The order denying defendant's petition under Penal Code section 1170.18 is affirmed without prejudice to later consideration of a properly supported petition.

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Grover, J.

**WE CONCUR:**

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Rushing, P.J.

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Premo, J.

*People v June*  
H042675